Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of	)	
	)	
Leased Commercial Access	)	MB Docket No. 07-42
	)	
	)	

OPPOSITION TO REQUEST FOR STAY

Engle Broadcasting is licensee and operator of WPSJ-LP, a Class A station in Winslow Twp., New Jersey.

Engle Broadcasting requests the Commission deny the stay requested by the NCTA.

A Commission grant of the stay requested by the NCTA will adversely impact WPSJ.

Engle Broadcasting is a frequent leased access user. We use leased access because it is the only way cable subscribers may view our community-oriented, local programming. We use leased access on a part-time basis because full-time is cost prohibitive in this highly competitive market. In short, we must pay to have our programs viewed by cable subscribers, a cost our competitors (cable and other television stations) do not have.

Since January 1, 2008, we have lost three clients because the local cable operators did not provide lease access information in a timely manner. The current regulation that an operator must provide information within 15 days upon request is, in our experience, loosely obeyed by cable operators. The business climate is such that programmers must move rapidly to secure advertisers to support leased access. Waiting two weeks for rates and time slot availabilities then another two to three weeks for a contract, which must be signed as-is, with no negotiation, is too cumbersome and results in lost opportunities and lost revenue to the lease access programmer.

The Commission's decision to adopt speedier response by cable operators to requests for leased access time; lower, simplified calculation of leased access rates; and expedited recourse to video programmers will increase the usage of leased access and the diversity of voices and information sources available to cable subscribers.

The NCTA admits the Order will "result in a substantial number of persons coming forward to use leased access"[1] which is the purpose of the Order.

The NCTA cites 47 USC 532 (c)(1)[2] as its justification to request the stay, claiming it is a "directive"[3] which must be blindly followed regardless of the negative impact it has on leased access programmers.

The NCTA fails to quote the entire paragraph[4], leaving off the modifier "<u>consistent with the purpose of this section,"</u> which changes the meaning.

That paragraph is a directive to the Commission to balance the statutory requirement to promote a diversity of voices and video programming through leased access with the consideration of the establishment of the fledgling cable industry.

Cable is no longer in its infancy as it was in 1984 when leased access was established. In 1984, nationwide cable penetration was 43.7%[5]; the average system had only 36 channels, and video on demand was only a "blue sky" dream. Most cable revenue came from monthly subscriber fees and the majority of programming was from free, over the air television stations. The average monthly subscriber fee for basic service was $9.00[6].

Today cable has matured and consolidated into a vertically integrated, multi-billion dollar industry.[7] In 1984, industry revenue totaled approximately $3.6 billion.[8] Today, the 2007 annual revenues for just one MSO is 10 times that

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[1] NCTA at Exhibit 3 pp 11
[2] 47USC 532(c)(1)
[3] See NTCA Request for Stay p.1
[4] 47USC 532(c)(1) If a person unaffiliated with the cable operator seeks to use channel capacity designated pursuant to subsection (b) for commercial use, the cable operator shall establish, <u>consistent with the purpose of this section</u>, the price, terms, and conditions of such use which Are at least sufficient to assure that such use will not adversely affect the operation, financial condition, or market development of the cable system.
[5] Broadcasting Cablecasting Yearbook 1985 p. D-3
[6] Broadcasting Cablecasting Yearbook 1985 p. D-3
[7] The first three exhibitors in the NCTA Request for Stay represent the largest cable operators in the country and all three have reported an increase in revenues from 2006 to 2007. In their 2007 Annual Reports: Time Warner reported a 20% increase in digital subscribers from 2006 to 2007; Comcast's annual revenue for 2007 is $30.9 billion, up from 26.3 billion in 2006; ND Cablevision reported an annual revenue of $6.4 billion in 2007, an increase of 11.3% over 2006 revenues.
[8] Broadcasting Cablecasting Yearbook 1985 p. D-3

amount[9] and total industry revenue is over $102 billion.[10] Clearly this is not an industry whose market development needs to be protected. The Commission no longer needs to shelter cable operators' market development at the expense of providing a diversity of voices through leased access.

The NCTA admits most leased access programmers are small businesses[11]. This is exactly the type of programmer Congress intended to use leased access. It is also the type of business which the Commission must defend against giant, consolidated operators flexing their market power to control the programming viewed by subscribers.

In its Request for Stay, the NCTA fails to provide any evidence of a cable operator declaring bankruptcy due to revenue opportunities lost to leased access.

In the NCTA's Exhibits, cable operators predict they will suffer significant losses[12] and even dragged out that tired old claim that they will have to take off CSPAN if forced to fulfill their statutory requirements for leased access.[13] Cable operators used this blatant attempt to intimidate regulators in 1992 when must carry was restored, and indeed every time leased access is considered by the Commission or Congress.

It should also be noted that the NCTA claims the new rates will result in the cable operator receiving zero dollars for leased access programming, however the cable operators <u>already are paid for the channels by the cable subscriber</u> through the monthly subscriber fees, and those rates have increased every year since deregulation in 1984, as have their profits[14]. This is the main reason for loss of cable subscribers, not addition of leased access programming.

This request for a stay is an attempt by cable operators to evade their statutory obligations for commercial leased access. Cable operators have admitted the Order will result in increased use of lease access by video programmers, mostly small businesses and individuals, which is the goal of the Order. Cable operators should not be allowed to prevent implementation of the Report and Order through legal machinations and stalling. The leased access community has waited too long for relief.

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[9] Comcast 2007 Annual Report
[10] NCTA website http://www.ncta.com/Statistic/Statistic/Statistics.aspx
[11] See NCTA Exhibit 3, pp 8
[12] NCTA Exhibit #2 pp3
[13] NCTA Exhibit #1 pp11

To conclude, we urge the Commission to deny the NCTA's Request for Stay and fully implement the Report and Order.

Respectfully submitted,

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